Public Prosecutor v Mustapha bin Abdullah

HIGH COURT (KUALA LUMPUR) — CRIMINAL REVISION NO 43-7-96
KC VOHRAH J
4 JUNE 1996

Criminal Law *— Penal Code — s 324 — Voluntarily causing hurt with dangerous weapon — Agressive and violent behaviour arising from a trivial traffic matter — Sentence*

Criminal Procedure *— Revision — Sentence — Voluntarily causing hurt with dangerous weapon — Whether sentence was inadequate — Criminal Procedure Code (FMS Cap 6) s 323 — Penal Code (FMS Cap 45) s 324*

Criminal Procedure *— Sentence — Inadequacy of sentence — Voluntarily causing hurt with dangerous weapon — Agressive and violent behaviour arising from a trivial traffic matter — Whether courts could take judicial notice of the prevalence of road aggression — Whether clear signals should be given that such aggression will be dealt with severely — Penal Code (FMS Cap 45) s 324*

The respondent was earlier fined RM2,000 in default four months' imprisonment by a magistrate after he pleaded guilty to a charge under s 324 of the Penal Code (FMS Cap 45) for using an iron chain to voluntarily cause hurt to a woman arising from a trivial traffic matter. The High Court judge called for the record of proceedings under s 323 of the Criminal Procedure Code (FMS Cap 6).

Held, enhancing the sentence:

(1) The facts revealed that the respondent was very aggressive and violent arising from a traffic dispute. The medical report showed that the victim, who was then two months' pregnant, suffered injuries on various parts of her body (see p 427A–C).

(2) The courts could take judicial notice that cases of aggression on the roads over trivial matters have become prevalent. This called for clear signals from the courts that such aggressive behaviour would be met with the severest of penalties (see p 427D); *Ong Hwee Leong v PP* [1992] 1 SLR 794, *R v Hassan; R v Schuller* (1989) RTR 129 and *Mohamed Noor v PP* [1966] 2 MLJ 173 followed.

(3) In order to do substantial justice in this case, and taking into account that the respondent had pleaded guilty, was 60 years old and had committed the offence whilst he was fasting during the month of Ramadhan, the sentence was enhanced to four months' imprisonment and the fine of RM2,000 was set aside (see p 428F–G).

[Bahasa Malaysia summary

Penentang telah didenda RM2,000 jika ingkar empat bulan pemenjaraan oleh majistret selepas mengaku salah atas satu pertuduhan di bawah s 324 Kanun Keseksaan (NMB Bab 45) kerana

menggunakan satu rantai besi dengan sengaja menyebabkan cedera kepada seorang perempuan yang timbul daripada satu perkara lalulintas yang remeh-temeh. Hakim Mahkamah Tinggi memanggil rekod prosiding di bawah s 323 Kanun Acara Jenayah (NMB Bab 6).

Diputuskan, menambah hukuman:

(1) Fakta-fakta menunjukkan bahawa penentang sangatlah agresif dan ganas akibat daripada satu pertikaian lalulintas. Laporan rawatan menunjukkan bahawa si mangsa, yang pada ketika itu hamil dua bulan, mengalami kecederaan ke atas beberapa bahagian badannya (lihat ms 427A–C).

(2) Mahkamah boleh mengambil notis penghakiman bahawa kes-kes penyerangan di jalan raya yang timbul daripada perkara remeh-temeh telah menjadi lazim. Ini memerlukan isyarat yang jelas daripada mahkamah bahawa kelakukan agresif demikian akan dikenakan hukuman yang amat tegas (lihat ms 427D); *Ong Hwee Leong v PP* [1992] 1 SLR 794, *R v Hassan; R v Schuller* (1989) RTR 129 dan *Mohamed Noor v PP* [1966] 2 MLJ 173 diikut.

(3) Bagi membolehkan pelaksanaan keadilan dalam kes ini, dan dengan mengambil kira penentang telah mengaku salah, adalah berusia 60 tahun dan telah melakukan kesalahan semasa berpuasa dalam bulan Ramadhan, hukuman ditambah kepada pemenjaraan empat bulan dan denda sebanyak RM2,000 diketepikan (lihat ms 428F–G).]

Notes

For cases on s 324 of the Penal Code, see 4 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1005–1012.

For cases on revision, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2124–2160.

For cases on sentence, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2213–2674.

Cases referred to

Mohamed Noor v PP [1966] 2 MLJ 173 (folld)
Ong Hwee Leong v PP [1992] 1 SLR 794 (folld)
R v Hassan; R v Schuller (1989) RTR 129 (folld)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 323
Penal Code (FMS Cap 45) s 324

Ganesan Somasundram (Deputy Public Prosecutor) for the prosecution.
Gulam Mustapha (*Gulam Mustapha & Co*) for the defendant.

Cur Adv Vult

KC Vohrah J: I called for the record of proceedings in this case under s 323 of the Criminal Procedure Code (FMS Cap 6) ('the CPC') after reading in one of the newspapers that a bully had used a chain to cause hurt to a woman in respect of a trivial traffic matter and that he had only been fined RM2,000 in default four months' imprisonment by a magistrate after he had pleaded guilty to a charge under s 324 of the Penal Code (FMS Cap 45) ('the Code').

I have perused the record and I have studied the nature of the offence with which the respondent was charged, the facts of which were presented to the court by the prosecuting officer and which were admitted to by him and his plea in mitigation; and I have no hesitation in saying that the sentence that was passed on the respondent is manifestly inadequate.

The offence against the respondent is one under s 324 of the Code and the relevant part of the section reads:

> Whoever ... voluntarily causes hurt by means of ... any instrument which, used as a weapon of offence, is likely to cause death ... shall be punished with imprisonment for a term which may extend to 3 years, or fine, or with whipping or with any two of such punishments.

The respondent was charged with committing the offence under s 324 of the Code on 8 February 1996; that he voluntarily caused hurt to a woman, Tan Min Lan, by using an iron chain, an instrument which, used as a weapon of offence, was likely to cause death.

On 11 April 1996, he was brought to court and he pleaded guilty to the charge.

The facts presented by the prosecutor are these. On 8 February 1996 at about 6.20pm, Tan Min Lan stopped her motor car near a fruit stall at Jalan Besar, Setapak Jaya, Kuala Lumpur and her elder sister, the complainant, went out to purchase some fruit. The respondent, who was riding a Honda Cup motor cycle, stopped at the rear of Tan Min Lan's car and hooted several times. Tan Min Lan then moved her car slightly forward but the respondent was still not satisfied and an argument broke out between the complainant and the respondent. The respondent suddenly tried to take a knife to attack the complainant but he was stopped by the members of the public there. The respondent then walked to his motor cycle and took out an iron chain, wanting to hit the complainant with it. Tan Min Lan went to her aid and the respondent hit Tan Min Lan's back and also pushed her down onto the road, after which he ran away. As a result of the attack, Tan Min Lan was injured on the back and received outpatient treatment at the Hospital Kuala Lumpur. The respondent was arrested the next day and he surrendered an iron chain about 2½ feet long with a padlock fastened at one end. The respondent admitted hitting Tan Min Lan with the iron chain.

The chain which I have seen is about 2½ feet long and is a heavy duty chain with a large padlock fastened to one end of it. It certainly can cause death. The chain with the padlock was probably meant to secure the respondent's motor cycle against theft.

A The facts clearly reveal that the respondent was very aggressive and violent arising from a trivial dispute relating to some traffic obstruction on the road. His extreme aggressiveness was shown by his having attempted to take a knife to use it on the complainant which but for the timely intervention of the crowd would have probably resulted in the complainant suffering serious injury inflicted by the cutting instrument. The respondent B continued his aggressive behaviour by deliberately walking to his motor cycle to take the 2½ feet chain, intending to attack the complainant. He deliberately vented his anger on the complainant's sister by hitting her with the chain on the back and pushing her down onto the road.

The medical report shows that the woman suffered injuries — C abrasions — on the back of her neck and the left scapula. The report stated that at the time of the assault, she was two months' pregnant.

Courts can take judicial notice that cases of aggression on our roads, most of the times over trivial matters, have become far too frequent. Defenceless victims — in addition to being terrorized — are brutally D punched, kicked, knocked about or attacked with lethal instruments by bullies. The present state of affairs calls for strong and firm handling by our courts of these bullies so that clear signals are sent out that the dangerous and obnoxious behaviour of bullies will be met with the severest of penalties.

E In *Ong Hwee Leong v PP* [1992] 1 SLR 794, Yong Pung How CJ dismissed the appeal of Ong who was sentenced to a week's imprisonment for getting out of his van and fisting in the face another driver who had annoyed him by switching on his headlights to high beam. He was charged under s 323 of the Penal Code (Cap 224) where the maximum sentence is one year's imprisonment or a liability to a fine or to a term of imprisonment F and fine. In the High Court, Ong argued for a sentence of a fine instead of the term of imprisonment. Yong Pung How CJ dismissed the appeal.

As was observed by Yong Pung How CJ at pp 795–796 in respect of the appeal before him:

> G This matter arose from what was certainly a trivial dispute. Such minor incidents occur on our roads many times every day. No doubt they are frustrating to those involved. But if, many times every day on our public roads, everyone were to lose his temper and react to the degree the appellant did, all semblance of order would quickly dissipate and only the most violent would prevail. The perceptible trend in this direction deservedly incurs the courts' displeasure and must be determinedly discouraged. Drivers H must refrain from alighting from their vehicles and assaulting others simply because those others have annoyed them by their driving in some other way. I therefore adopt unreservedly Lord Lane CJ's view in *Hassan & Schuller* that prison sentence ought to follow this sort of incident.

In *R v Hassan; R v Schuller* (1989) RTR 129 (CA) (see *Archbold* 1994 I Vol 2 (Reissue) 19–196), the defendants had been the occupants of one car. They assaulted the driver of another car by punching him in the face a total of four times before the police intervened. The assault arose out of an altercation over a parking place: the defendant who was driving had

manoeuvred his car in such a way as to prevent the victim who had arrived first from reversing into the space. The defendant had then taken the space himself. Lord Lane CJ, in delivering the judgment of the court, said that generally speaking, such a comparatively trivial incident ending in blows would properly be the subject of a fine and/or a compensation order.

However, the habit of drivers getting out of their cars, losing their tempers and striking other road users seemed to be a phenomenon which unhappily was increasing. It had to be realized that drivers must not get out of their vehicles and assault others who might have caused aggravation by their driving or in any other manner. The judge was correct to indicate the displeasure of the court by imposing a prison sentence. If that kind of incident occurred, a prison sentence would follow.

In our case, the offence with which the respondent was charged is not one under s 323 of the CPC for causing simple hurt but under s 324 of the Code for causing hurt with a lethal weapon and the punishment is imprisonment up to three years, or with fine, or with whipping or with any two of such punishment. In *Mohamed Noor v PP* [1966] 2 MLJ 173, Mohamed Noor appealed against a sentence of two years' imprisonment for an offence under s 324 where he used a kris, an instrument for cutting, to cause injury on a person. Abdul Aziz J (as he then was) dismissed the appeal and one of the grounds he considered was the prevalence of offences of violence of such nature in the state concerned.

There is hardly a week that passes by without reports of violent attacks by aggressive road users on other road users. A stop must be put to these attacks. And that can only be done by our courts if exemplary sentences are meted out to deter such brutish behaviour.

In order to do substantial justice in this case, I have to act to enhance the manifestly inadequate sentence. I would reserve the maximum of three years for a person in a very bad case where violence with a dangerous weapon is used if the person had claimed trial and was found guilty. The accused in this case pleaded guilty and I have to take that into account when revising the sentence. I have also to consider that he is 60 years old and that he was fasting during that day in the month of Ramadhan. In all the circumstances of the case, he should have been sentenced to four months' imprisonment instead of being fined. I set aside the fine of RM2,000 and sentence him to four months' imprisonment as from today. The fine is to be refunded to him.

Order accordingly.

Reported by Tey Tsun Hang